

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

WP(C).No. 33183 of 2014 (W)

PETITIONER(S):

**KHADI GRAMA SOUBHAGYA,
A UNIT OF KHADI AND VILLAGE INDUSTRIES BOARD,
KHADI TOWERS, KALOOR, KOCHI-682 017,
REPRESENTED BY ITS PROJECT OFFICER, K.K.CHANDNI.**

BY ADV. SRI.MATHEW KURIAKOSE.

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**
- 2. THE COMMERCIAL TAX OFFICER,
KVAT CIRCLE II KALAMASSERY AT CIVIL STATION,
KAKKANAD, KOCHI-682 030.**
- 3. THE ASST. COMMISSIONER (APPEALS),
OFFICE OF THE DEPUTY COMMISSIONER (APPEALS),
COMMERCIAL TAXES, ERNAKULAM-682 030.**

BY GOVT. PLEADER SRI.SUDHEESH KUMAR.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 23-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1- TRUE COPY OF THE ASSESSMENT ORDER ISSUED BY
THE 2ND RESPONDENT FOR THE PERIOD 2008-2009.
- EXT.P2- TRUE COPY OF APPEAL MEMORANDUM FOR THE PERIOD
OF 2008-2009.
- EXT.P3- TRUE COPY OF THE STAY PETITION.
- EXT.P4- TRUE COPY OF THE ASSESSMENT ORDER ISSUED BY
THE 2ND RESPONDENT FOR THE PERIOD OF 2009-2010.
- EXT.P5- TRUE COPY OF APPEAL MEMORANDUM FOR THE
PERIOD 2009-2010.
- EXT.P6- TRUE COPY OF THE STAY PETITION.
- EXT.P7- TRUE COPY OF THE PROCEEDINGS OF THE ASSISTANT
COMMISSIONER APPEALS DATED 17.11.2014.

RESPONDENT'S EXHIBITS:-

NIL.

//TRUE COPY//

P.A TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.33183 of 2014

.....
Dated this the 23rd day of February, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P7 conditional order of stay passed by the 3rd respondent in appeals that were filed by the petitioner against Exts.P1 and P4 assessment orders under the CST Act. In the writ petition, the petitioner challenges Ext.P7 on the ground that while passing Ext.P7 order, the 3rd respondent had not exercised his discretion validly and that the direction, to deposit 30% of the outstanding demand against the petitioner as a condition for grant of the stay, was passed in a mechanical manner.

2. I have heard Sri.Mathew Kuriakose, the learned counsel for the petitioner and Sri.Sudheesh Kumar, the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that in Ext.P7 order, the 3rd respondent takes note of the fact that the petitioner had not furnished any reply or objection to the pre-

assessment notice and under those circumstances, the assessing authority was constrained to presume that the petitioner had no objection to the proposal in the pre-assessment notice. That apart, I note that the 3rd respondent has considered the contentions advanced by the representative of the petitioner and it was after adverting to the same that the 3rd respondent found that the petitioner was required to pay 30% of the outstanding demand as a condition for the grant of stay. Inasmuch as this is not a case where I find the exercise of discretion by the 3rd respondent to be legally flawed, I dismiss the writ petition in its challenge against Ext.P7 order of the 3rd respondent. I take note, however, of the plea of financial hardship urged on behalf of the petitioner and direct that if the petitioner complies with the directions in Ext.P7 order on or before 20.03.2015, then the same shall be treated as compliance with the directions in Ext.P7 order, and the 3rd respondent shall proceed to hear the appeals preferred by the petitioner on merits.

A.K.JAYASANKARAN NAMBIAR
JUDGE

